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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 20

W.M.C.A., INC., ET AL.,

Appellants,

v.

CAROLINE K. SIMON, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTION TO DISMISS OR AFFIRM

FRANCIS J. MORGAN,
County Attorney and
Attorney for Appellee,
Leonard Berman,
Office & P. O. Address:
County Office Building,
White Plains, New York

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 460

W.M.C.A., INC., *et al.*,

Appellants,

v.

CAROLINE K. SIMON, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION TO DISMISS OR AFFIRM

Appellee, LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County, pursuant to Rule 16 of the Revised Rules of this Court, moves to dismiss the appeal or affirm the judgment in the above entitled case upon all the grounds as are fully set forth in the same motions being made herein by the appellees, CAROLINE K. SIMON, Secretary of State of the State of New York, and LOUIS J. LEFKOWITZ, Attorney General of the State of New York.

Statement

This appellee, LEONARD BERMAN, asks leave that the respective grounds, arguments, points, authorities and citations set forth in the motions to dismiss or affirm made

herein by the appellees above mentioned be considered as though the same were recited herein in full, and that the same be treated by this Court as the said appellee's motion to dismiss or affirm pursuant to Rule 16 of the Revised Rules of this Court.

The theme "one man—one vote" as a basic principle of legislative apportionment is not supported by any constitutional guaranties. The fallacy of such principle lies in the fact that a constitutional apportionment thereunder immediately becomes unconstitutional whenever there are shifts or changes in population. Under this equal-population's doctrine, malapportionment would become a daily and constant occurrence.

Plenary consideration should not be granted herein, for it affirmatively appears on the record that appellants have wholly failed to prove facts establishing the allegations of unconstitutionality set forth in the complaint. Accordingly, there is no substantial federal question presented to the Court.

Conclusion

We respectfully submit that the decision of the District Court is correct and that the appeal should be dismissed or the order and judgment of the District Court dismissing the complaint on the merits should be affirmed.

Respectfully submitted,

FRANCIS J. MORGAN,
County Attorney and
Attorney for Appellee,
Leonard Berman,
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County Office Building,
White Plains, New York.

Dated: October 24, 1962.